

# UTAH SCHOOL LAW UPDATE

Utah State Office of Education

March 2008

# **Democratic Process?**

Most readers understand how the legislative process is SUPPOSED to work. But the way bills unfold in the Utah legislature can at times differ from the "bill to law" explanation posted on the www.le.utah.gov website. Sometimes it is far more confusing.

As we think back on our civics lessons, the standard process usually involves a bill being heard first in a committee where the public is allowed to comment on it. While some committees at the legislature regularly forego public comment on certain bills, most do allow for that input.

If the bill survives the committee hearing, it then moves to the floor of the chamber where it originated for further debate and a vote.

If the bill makes it out of the first chamber, it goes through the same process again in the other chamber. If it survives further debate in the second chamber, it may then be signed by the governor and become a law.

That is the centuries old process that ensures that the representatives of the voters each have a chance to cast a vote on a bill, and have those votes count.

In the Utah legislature, however, the process may vary somewhat.

The best example of this is Senate Bill 2, sponsored by Sen. Howard Stephenson, R-Draper. S.B. 2 was a 44 page bill that appeared three days before the close of the legislative session.

It's not unusual for previously unheard bills to sprout in the final days of the session, but it does mean that the first step in the process is omitted—the bill will not be heard in a committee meeting and, therefore, there will be no chance for public comment on the measure.

The more unusual move in the passage of this bill, however, was the decision by the sponsor to revive legislation that had already been voted down in one legislative chamber or another.

In fact, S.B. 2 revived three bills that had previously failed to garner legislative support, i.e., legislators exercised their right to vote on the measures, a majority chose not to support the measures, but their votes were discounted and the bills returned for a second vote. On the second try, however, the dead bills were tied together with bills that had not been voted on but most likely would have passed.

So, S.B. 2 took other bills that would have passed, such as more money for special educators, school libraries, an increase in the WPU, and others, and grafted them onto a bill that allocated \$2.5 million dollars for a trial preschool software program which had already been voted

down in the House. It also tied the living bills to a bill providing an extra \$5,000 to math and science teachers which failed on its own in a House committee.

A final piece of the legislation grafted on a requirement that teachers apply to the Division of Human Resource Management for their raises. This portion included a \$300,000 appropriation to DHRM to administer it. The section also noted that if the money was not enough to cover DHRM's expenses, DHRM could unilaterally lower the amount of the raises to cover its costs.

In part because the State Office of Education provides the service free of charge and without the need for teachers to apply, the bill that originally contained these provisions failed in a House committee as well. Not content with the first vote of the House, however, the sponsor of S.B.2, Sen. Howard Stephenson, R-Draper, revived the provision

Stephenson's and House sponsor Brad Last's explanations for combining the living bills with the dead were twofold: legislators didn't have enough information when they voted the first time on the preschool bill and it would make it easier for legislative staff to coordinate the bills if all were tied into one. This wisdom was not debated.

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#### **UPPAC CASES**

- The Utah State Board of Education reinstated Leo Platero's educator license.
- The State Board suspended Kia Brynn
  Bateman's license for one year. The suspension results from her conviction of a second DUI offense in violation of the terms of a prior hearing report.
- The State Board suspended Verrell Clark Blaisdell's license for up to one year. The suspension results from Mr. Blaisdell's Plea in Abeyance for a Class A misdemeanor count of communications fraud.

## Eye On Legislation

Of the 195 education bills proposed during the 2008 session, only 55 survived (the number is slightly higher if you pull out the 12 bills rolled into SB2). This means fewer changes in Utah's education laws than in past sessions.

The relative dearth of new legislation can be chalked up to two factors: less revenue to spend than predicted, and, following the rancorous voucher battle, an attempt by the majority of legislators to scale back on legislation that might be perceived as an attack on public education.

There were a few dissenters from the kinder, gentler tone of the legislature, but legislation designed to change the structure of the State Board (H.B. 244 School Board Elections and Districts, Rep. Carl Wimmer, R—) or otherwise punish supporters of the voucher referendum (H.B. Hughes union bill) failed. Many of these

ideas, however, will be explored during the interim, per the Master Study Resolution.

The Resolution provides a laundry list of items for legislators to discuss in the interim before the 2009 session. Per the list, legislators will take the next several months to consider "issues related to education governance and funding," high school graduation requirements, PTA's (a non-state entity), whether "academically bankrupt" public schools should be taken over by private entities, whether the State Board should be revamped again and selected by partisan elections, the accountability of the Utah High School Activities Association, how school districts are governed, the school land program's administration, funding for virtual charter schools, and the "effectiveness, value, and funding of International Baccalaureate programs" in Utah

schools.

The list also includes enlarging the role of community councils and legislative oversight of school construction projects, among other items.

Among the 55 surviving pieces of legislation are 16 new public education programs, including a \$1,000

new teacher signing bonus program, the Beverly Taylor Sorenson Arts Learning Program, the High-Ability Student Initiative, and the English Language Learner Family Literacy Centers Program.

Also included in the mix are provisions to streamline the process for retired teachers to return to the classroom, expanded opportunities for parents interested in open enrollment, and new requirements to permit charter and online students to participate in extracurricular activities.

## **UPPAC** Case of the Month

When an educator faces criminal charges based on conduct that is also considered unprofessional by the Utah Professional Practices Advisory Commission, the Commission may decide to pursue the matter at the same time as the criminal investigation.

This may make sense in some cases, but the Commission may also decide to wait out the criminal, especially if the crime involves minors or students.

Some defense attorneys also request that UPPAC wait, for a variety of reasons. Some hope that an acquittal will forestall the UPPAC case. Others prefer to fight one battle at a time. Still others have the mistaken belief that statements made in a UPPAC hearing can be used against the educator in the criminal process.

Of these three motivations, only the second has merit.

An acquittal on criminal charges does not end the UPPAC matter.

For those who still remember OJ Simpson, the reason is clear. A person may be able to escape the criminal case because the prosecution cannot meet the "beyond a reasonable doubt" standard of proof. But that same individual may face personal liability in a civil case on the same set of facts, as OJ did.

Or, in the case of an educator, the prosecutor may not get beyond a reasonable doubt for a criminal case, but there may be ample evidence to meet the lower "preponderance of the evidence" standard needed to take action against the educator license.

"Preponderance of the evidence" means the Commission need only decide that it is more likely than not that the misconduct occurred in order to take action.

As in the criminal/civil context, the differences in the standard of proof reflect the differences in the consequences of guilt. In a criminal case, the educator may face loss of liberty—a Constitutionally protected right. In the UPPAC case, the educator faces the loss of a professional license—a privilege granted by the State.

As to the final motivation, case law has long established the premise that testimony provided in an administrative setting may NOT be used against the accused in a criminal trial.

#### IMPORTANT NOTICE:

Please see http:// www.rules.utah.gov/publicat/ code/r277/r277-515.htm for the Utah Educator Standards applicable to ALL licensed educators.

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### **Recent Education Cases**

Villaseca v. City of New York (N.Y. Dist. 2008). The court ruled that the city was not liable for any of the \$5,550,000 awarded to a teacher for injuries suffered on the job. The court found the school board liable for the entire amount.

The teacher lost sight in one eye despite nine surgeries to save it. The injury occurred after an 8-year old emotionally disturbed student slammed a door against the side of the teacher's head.

The school board was 100% liable for the injury, despite the student's actions, because the hydraulic control on the door had been broken for over a year, the district received notice that the door was broken and the student would not have been able to injure the teacher had the hydraulic control been operational. Further complicating the situation, the school served only emotionally disturbed children and the door was the sole entrance to a room where the most unruly students were sent.

In short, thank your maintenance crew today for keeping tabs on facility malfunctions and making timely repairs.

<u>Jachetta v. Warden Joint Consol.</u> School Dist., (Wash. App. 2008). A school district was not liable for a student's post-traumatic stress disorder and acted reasonably in its discipline of students.

A student created a "hit list" of other students. The student was suspended for 45 days. The suspension was lowered after a mental health care professional recommended that the student was not a threat and should be allowed back in school.

The parents of one student wanted the creator of the list suspended for the remainder of the school year. When he returned early, and after the parents worked with the school on alternative schooling arrangements for their child, the parents sued the district, claiming it breached a duty of care toward their student who suffered PTSD from the hit list incident.

The court ruled against the parents, noting that the school acted within its authority when it decided to readmit the student early based on the comprehensive mental health assessment conducted by a licensed psychiatrist.

Parker v. Hurley (1st Cir. 2008). The 1st Circuit Court of Appeals ruled against parents who claimed that elementary school curriculum

materials violated their free exercise and parental rights.

The parents sued the school district over the inclusion of curriculum materials designed to foster respect for homosexual parents and couples. The materials included books showing families with same-sex parents.

The offended parents alleged the district had to provide them with prior notice of the materials and

an exemption from the instruction.

Massachusetts law provides for notice and an exemption from human sexuality instruction, but the materials at issue were not part of

a human sexuality lesson, the books were part of a health unit on family life and respect for diversity. Thus, the court found, the school did not have to provide notice or an exemption.

The court noted that "the mere fact that a child is exposed on occasion in public school to a concept offensive to a parent's religious belief does not inhibit the parent from instructing the child differently."

# **Your Questions**

Q: My daughter attended a half year of kindergarten in another state. I was told she would not have to repeat kindergarten here but the district insists I register her for kindergarten. How do I get her into first grade?

A: While procedures vary by district, the district can register your daughter for kindergarten, then test her at the start of the year to determine if she is ready for first grade.

Ultimately, however, placement

What do you do when. . . ?

decisions are made by the district and it could determine that she is not yet ready for first grade, despite her prior kindergarten experience.

Q: Must a school keep an educator's fingerprint cards once the background check is complete?

Can the school return the cards to the teacher?

A: The school does not need to keep the fingerprint cards. The cards should either be destroyed or, if the teacher prefers, returned to the teacher.

Q: What is the ten-day rule for absences? Does it include planned vacations? Illnesses?

A: The ten-day rule can be found in the State Board of Education's

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

# Your Questions Cont.

(Continued from page 3)

Pupil Accounting rule (R277-419-4A(1)(c)) which states that a district can include in its student membership counts for funding students who have no "unexcused absences on all of the prior ten consecutive school davs."

Or, stated the other way, a district may not count a student who has missed 10 consecutive days of school for unexcused absences in its membership counts for funding purposes.

Whether an absence is excused is a matter of district policy, crafted in conformance with state law. The law was changed during the 2007 and adds a definition of "valid excuse" which means:

- (a) an illness:
- (b) a family death;
- (c) an approved school activ-

ity;

- (d) an absence permitted by a school-age minor's:
- (i) individualized education program, developed pursuant to the Individuals with Disabilities Educa-

tion Improvement Act of 2004, as

amended; or

(ii) accommodation plan, developed pursuant to Section

504 of the Rehabilitation Act of 1973, as amended; or

(e) any other excuse established as valid by a local school board, local charter board, or school district. 53A-11-101 [emphasis added].

The law also requires that districts and charter schools approve extended absences "if the local school board, local charter board, or school district determines that the extended absence will not adversely impact the school-age minor's education." 53A-11-101.3 [emphasis added].

Q: If a sibling and her spouse are appointed legal guardians and subsequently divorce, who retains access to the student's records under the federal Family Educational Rights and Privacy Act?

A: Both guardians retain their FERPA rights, unless other arrangements are specifically spelled out in the divorce decree. To deprive the ex-spouse of access to the records, the divorce proceedings would have to include termination of the exspouse's guardianship over the student.